Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term 1997

NANCY PRESCOTT,

Petitioner,

v.

G.I.W. INDUSTRIES, INC., and
KSB AMERICA COMPANY,

Respondents.

Petition For a Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

APPENDIX TO CERTIORARI PETITION

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION
CIVIL ACTION NO. CV 195-44

NANCY PRESCOTT,	*
Plaintiff,	*
	*
v.	*
	*
G.I.W. INDUSTRIES, INC, and	*
KSB AMERICA COMPANY,	*
Defendants.	*
	*

ORDER

Before the Court is Defendants' Motion for Summary Judgment in this action brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. Defendants allege Plaintiff Nancy Prescott failed to satisfy the statutory prerequisites to suit under Title VII and seek dismissal of all claims as a matter of law. Specifically, Defendants argue Plaintiff failed to file her charge of gender discrimination with the Equal Employment Opportunity Commission (the "EEOC") within 180 days of the alleged discriminatory act. See 42 U.S.C. § 2000e-5(e)(1). For the reasons stated herein, the Motion for Summary Judgment is **GRANTED.**

The following facts are undisputed. Plaintiff was **[end 1; R.1-23]** employed by Defendant GIW Industries, Inc., in

August of 1976.[1] On March 25, 1994, Plaintiff was terminated, allegedly because of a reduction in force. On September 28, 1994, more than 180 days after her termination, Plaintiff filed a discrimination complaint with the EEOC. Prior to this filing, but before the expiration of the 180-day time limit, Plaintiff filed a complaint on September 15, 1994, with the Richmond County Human Relations Commission (the "RCHRC"). Plaintiff filed the present suit in this Court on March 23, 1995.

A plaintiff may not maintain a Title VII discrimination suit in federal court unless the plaintiff has filed a charge of discrimination with the EEOC within 180 days of the alleged discriminatory act. 42 U.S.C. § 2000e-5(e)(1).[2] This requirement of filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite, but instead, it is in the nature of a statute of limitations. Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1981). **[end 2]**.

In this case, Plaintiff alleges Defendants discriminated against her because of her gender when they terminated her. The limitation period for filing a charge of discrimination began

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[1] Plaintiff's allegations of discrimination against Defendant KSB America Company are premised upon her assertion that it owns 51% of the stock of Defendant GIW.

[2] Section 2000e-5(e)(1) allows 300 days for the required filing with the EEOC if the plaintiff "has initially instituted proceedings with a State or local agency with authority to grant or seek relief" from the alleged discriminatory act. However, Plaintiff does not seek to invoke this extended time period because her filing with the RCHRC was within 180 days of her termination. Thus, the 300-day period is not an issue in this case. Furthermore, Georgia has not designated a Title VII deferral agency for purposes of accepting filed charges, see 29 C.F.R. §§ 1601.13(A), 1601.74; therefore, the 300-day time period is inapplicable to this case.

to run on March 25, 1994, the date of Plaintiff's termination.[3] It is undisputed that plaintiff's filing with the EEOC on September 28, 1994, is not within the 180-day limitation period. Accordingly, Plaintiff's Title VII claims are procedurally barred.

In her Brief in Opposition to Summary Judgment, Plaintiff argues the filing of a complaint with the RCHRC on September 15, 1994, constituted a timely filing of the charges because the RCHRC is an agent for the EEOC for the purpose of accepting filed charges. Plaintiff bases this argument on a "Worksharing Agreement" in which the EEOC and the RCHRC "each designate[d] the other as its agent for the purpose of receiving and drafting charges." Worksharing Agreement (the "Agreement"), II. A. However, the employment practices challenged in this case indisputably arose in Columbia County, Georgia, not Richmond County, Georgia.

The central issue presented by Plaintiff in this case is a simple question of agency: Does the RCHRC have the authority to accept charges on behalf of the EEOC based upon discriminatory acts occurring outside of Richmond County? A **[end 3]** closer review of the Agreement compels a negative response.

Section I. A. of the Agreement specifically states that the "jurisdiction" of the RCHRC extends to unlawful employment practices "occurring within Augusta/Richmond County." Section I. B. limits the scope of the Agreement "to the extent of the common jurisdiction" of the tow agencies. Section II. B. explains that the RCHRC may take complaints

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[3] There is some dispute as to whether the effective date of Plaintiff's termination was March 25 or March 28. This difference, however, is immaterial because the EEOC filing was not made within 180 days of either date.

alleging a violation of Title VII where the agencies "have mutual jurisdiction." Also, section II. C. refers to cooperation between the agencies only "to the extent of their common jurisdiction." By its own terms, the Agreement relied upon by Plaintiff to establish the RCHRC as an agent of the EEOC only contemplates an agency relationship with regard to employment practices occurring within Richmond County, Georgia. Therefore, the RCHRC could not have accepted the filed charges as an agent for the EEOC within 180 days of the alleged discriminatory act.

Under the foregoing analysis, Plaintiff's claims in this case are procedurally barred for failure to file a claim with the EEOC within 180 days of her termination. The Defendants' Motion for Summary Judgment is **GRANTED** hereby. Both Defendants' Motion to Compel Discovery are **DENIED AS MOOT.**

The Clerk is instructed to **CLOSE** this case and **ENTER [end 4] FINAL JUDGMENT** for Defendants. Costs are taxed against Plaintiff.

ORDER ENTERED at Augusta, Georgia, this 20th day of March, 1996.

/s/ Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION
CIVIL ACTION NO. 195-44

NANCY PRESCOTT,
Plaintiff,

v.

G.I.W. INDUSTRIES, INC, and
KSB AMERICA COMPANY,
Defendants.

ORDER

On March 20, 1996, this Court granted Defendants' Motion for Summary Judgment in the above-captioned case. Presently before the Court is Plaintiff's Motion for Reconsideration of the March 20, 1996 Order.[1] For the reasons stated below, the Motion for Reconsideration is **DENIED.**

Plaintiff brought this gender discrimination suit under Title VII of the Civil Rights Act of 1974, 42 U.S.C. §§ 2000e et seq. In their motion for summary judgment Defendants

[1] Plaintiff's motion references both a motion for a new trial under Fed.R.Civ.P. 59 and a motion for reconsideration under Fed.R.Civ.P. 60. The proper vehicle by which to challenge an order of summary judgment is a motion to alter or amend a judgment under Fed.R.Civ.P. 59(e). Because this motion was filed within ten days of the entry of the March 20, 1996 Order, I will construe Plaintiff's Motion for Reconsideration as such. See, e.g., Edward H. Bohlin Co. v. Banning Co., 6 F.3d 350 (5th Cir. 1993).

alleged that Plaintiff failed to satisfy the statutory prerequisites to suit under Title VII; specifically, **[end 1 of R.1-34]** Defendants argued Plaintiff failed to file her charge of gender discrimination with the Equal Employment Opportunity Commission (the "EEOC") within the 180 days of the alleged discriminatory act. See 42 U.S.C. § 2000e-5(e)(1).

The procedural posture of the case was not in dispute. The issue before the Court involved a determination of whether Plaintiff's filing of a discrimination complaint with the Richmond County Human Relations Commission (the "RCHRC") within the 180-day period constituted a timely filing with the EEOC. Plaintiff argued the RCHRC is an agent for the EEOC for the purpose of accepting filed charges because of a "Worksharing Agreement" between the agencies. Based upon the clear and unambiguous language of the Worksharing Agreement this Court found that even if the RCHRC is an agent for the EEOC, the scope of this agency relationship is confined to discriminatory acts occurring within Richmond County, Georgia. Accordingly, the RCHRC filing was found insufficient to satisfy the procedural prerequisite of filing a charge with the EEOC within 180 days of the alleged discriminatory act. Plaintiff's Title VII claim thus was procedurally barred.

In her Motion for Reconsideration, Plaintiff submits the declarations of two RCHRC employees by which the declarants state that they understand the Worksharing Agreement to allow the RCHRC to accept a filing on behalf of the EEOC for any **[end 2]** charge in Georgia. In addition, Plaintiff has elicited the aid of the Regional Attorney of the United States EEOC, William D. Snapp. Mr. Snapp informed this Court by letter dated April 4, 1996, that the EEOC, as amicus curiae, may seek the opportunity to address the issues raised for leave to file the affidavit of the Acting District Director of the EEOC "to assist the Court in rendering a decision interpreting the contractual

and procedural relationship between the E.E.O.C. and the Richmond County Human Relations Commission." Defendants opposed the motion because the EEOC is not a party to this suit, see Fed.R.Civ.P. 43(e), 56(c) (limiting the submission of affidavits for consideration on a motion for summary judgment to the parties of an action), and the EEOC has not heretofore requested or received amicus curiae status in this case. On May 13, 1996, Plaintiff filed the affidavit of the Acting District Director of the EEOC into the record; therefore, the Motion for Leave to File Affidavit by the EEOC is **DENIED AS MOOT.**

As a result of this procedural jousting, before the Court are three affidavits of employees of either the EEOC or the RCHRC in support of Plaintiff's Motion for Reconsideration. Plaintiff's motion is predicated on essentially the same argument previously advanced in opposition to Defendants' motion for summary judgment. Essentially, Plaintiff asserts **[end 3]** that the scope of the agency relationship between the EEOC and the RCHRC extends to discriminatory acts occurring outside Richmond County. Having already considered and rejected this argument, the Court will not readdress it except to point out that the affidavits belatedly submitted by Plaintiff cannot be used to contradict the clear and unambiguous language of the Worksharing Agreement which specifically addresses the agency question at issue. R.C. Craig, Ltd. v. Ships of the Sea, Inc., 401 F.Supp. 1051, 1058 (S.D.Ga. 1975) ("[P]arol evidence cannot be employed to add to, take from, or vary the terms of the written agreement.").

There is no doubt that the result is harsh to a plaintiff who would have little reason to know the details of an inter-agency agreement. However, a harsh result cannot be used as the excuse to dismantle the law in a result-oriented quest for subjective fairness.

For the foregoing reasons, Plaintiff's Motion for Reconsideration is **DENIED.**

ORDER ENTERED at Augusta, Georgia, this 23rd day of May, 1996.

/s/Dudley Bowen, Jr.
UNITED STATES DISTRICT JUDGE
[end 4]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 96-8545
Non-Argument Calendar

D.C. Docket No. CV195-44

NANCY PRESCOTT,

Plaintiff-Appellant,

versus

GIW INDUSTRIES; KSB AMERICA COMPANY,

Defendants-Appellees,

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Movant.

Appeal from the United States District Court
for the Southern District of Georgia

(February 26, 1997)

Before HATCHETT, Chief Judge, TJOFLAT, and EDMONDSON, Circuit Judges.

PER CURIAM:

We agree with the district court for the reasons stated in its dispositive orders of March 20 and May 23, 1996, that appellant's Title VII claim is barred. In addition , we find no abuse of discretion in the district court's denial of appellant's motion for reconsideration of the court's March 20, 1996, order granting appellees' motion for summary judgment.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 96-8545

NANCY PRESCOTT,

Plaintiff-Appellant,

versus

GIW INDUSTRIES; KSB AMERICA COMPANY,

Defendants-Appellees,

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Movant.

On Appeal from the United States District Court for the
Southern District of Georgia
ON PETITION(S) FOR REHEARING AND
SUGGESTION(S) OF REHEARING EN BANC
(Opinion_____, 11th Cir., 19_, __F.2d __).

Before: HATCHETT, Chief Judge, TJOFLAT and EDMONDSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) or Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/Gerald Tjoflat
UNITED STATES CIRCUIT JUDGE
[stamp dated April 30, 1997]

Constitutional Provisions, Statutes

Amendment V

...[N]or [shall any person] be deprived of life, liberty, or property, without due process of law....

Amendment XIV

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes

42 U.S.C. § 2000e [§ 705] EEOC

42 U.S.C. § 2000e-4. [§ 705]

Principal and other offices

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

Powers of Commission

(g) The Commission shall have power —

(1) to cooperate with and, with their consent, utilize regional, State, local and other agencies, both public and

private, and individuals;

42 U.S.C. §2000e-5 [§706]

Enforcement provisions

Charges by persons aggrieved etc.; filing;....

(b) Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires.

State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (b) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purpose of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency

(e)(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

Code of Federal Regulations

29 C.F.R. § 1600

29 C.F.R. § 1601.6 Submission of information.

(a) The Commission shall receive information concerning alleged violations of title VII of the ADA from any person. Where information discloses that a person is entitled to file a charge with the Commission, the appropriate office shall render assistance in the filing of the charge. Any person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination.

Such request, with any pertinent information shall be submitted to the nearest field office.

29 C.F.R. § 1601.8 Where to make a charge.

A charge may be made in person or by mail at the offices of the Commission in Washington, DC, or any of its field offices or with any designated representative of the Commission. The addresses of the Commission's field offices appear in § 1610.4.

29 C.F.R.§ 16.01.9 Form of charge.

A charge shall be in writing and signed and shall be verified.

29 C.F.R. § 1601.12. Contents of charge; amendment of charge.

(a) Each charge should contain the following:

(1) The full name, address and telephone number of the person making the charge except as provided in § 1601.7;

(2) The full name and address of the person against whom the charge is made, if known (hereinafter referred to as the respondent);

(3) A clear and concise statement of the facts, including pertinent, dates, constituting the alleged unlawful employment practices: See § 1601.15(b);

(4) If known, the approximate number of employees of the respondent employer or the approximate number of members of the respondent labor organization, as the

case may be; and

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local agency charged with the enforcement of fair employment practice laws and if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A Charge that has been so amended shall not be required to be redeferred.

C.F.R. § 1601.13 Filing deferrals to State and local agencies.

(a) *Initial presentation of a charge to the Commission.* (1) Charges arising in jurisdictions having no FEP agency are filed with the Commission upon receipt. Such charges are timely filed if received by the Commission within 180 days from the date of the alleged violation.

(2) A jurisdiction having a FEP agency without subject

matter jurisdiction over a charge (e.g., an agency which does not cover sex discrimination or does not cover nonprofit organizations) is equivalent to a jurisdiction having no FEP agency. Charges over which a FEP agency has no subject matter jurisdiction are filed with the Commission upon receipt and are timely filed if received by the Commission within 180 days from the date of the alleged violation.

(3) Charges arising in jurisdictions having a FEP agency with subject matter jurisdiction over the charges are to be processed in accordance with the Commission's deferral policy set forth below and the procedures in paragraph (a)(4) of this section.

(i) In order to give full weight to the policy of section 706(c) of title VII, which affords State and local fair employment practice agencies that come within the provisions of that section an opportunity to remedy alleged discrimination concurrently regulated by title VII or the ADA and State or local law, the Commission adopts the following procedures with respect to allegations of discrimination filed with the Commission. It is the intent of the Commission to thereby encourage the maximum degree of effectiveness in the State and local agencies. The commission shall endeavor to maintain close communication with the State and local agencies with respect to all matters forwarded to such agencies and shall provide such assistance to State and local agencies as if permitted by law and as is practicable.

... [other deferral matter]...

(c) *Agreements with Fair Employment Practice agencies.* Pursuant to section 705(g)(1) and section

606(b) of title VII, the Commission shall endeavor to enter into agreements with FEP agencies to establish effective and integrated resolution procedures. Such agreements may include, but need not be limited to, cooperative arrangements to provide for processing of certain charges by the Commission, rather than by the FEP agency during the period specified in section 706(c) and section 706(d) of title VII.

29 C.F.R. § 1601.71 FEP agency notification.

(a) When the Commission determines that an agency or authority meets the criteria outlined in section 706(c) of title VII and § 1601.70, the Commission shall so notify the agency by letter and shall notify the public by publication in the FEDERAL REGISTER of an amendment to § 1601.74.

(b) Where the Program Director, Office of Program Operations determines that an agency or authority does not come within the definition of a FEP agency for purposes of a particular basis of discrimination or where the agency or authority applies for designation as a Notice Agency, the Commission shall notify that agency or authority of the filing of charges for which the agency or authority is not a FEP agency. For such purposes that State or local agency will be deemed a Notice Agency.

29 C.F.R. § 1601.74 Designated and notice agencies.

(a) The designated FEP agencies are :

Alaska Commission for Human Rights
Austin (TX) Human Relations Commission [3]

[[3] The Austin (TX) Human Relations Commission has been designated as FEP agency for all charges except charges alleging a violation of title VII by a government, government agency, or political subdivision of the State of Texas.

For these types of charges it shall be deemed a "Notice Agency," pursuant to 29 C.F.R. 1601.71 (b).]

(a) Georgia Office of Fair Employment Practices [6]

[6] The Georgia Office of Fair Employment Practices has been designated as a FEP agency for all charges covering the employment practices of the departments of the State of Georgia only.]

Richmond County (GA) Human Rights Commission

(b) The designated Notice Agencies are:

Arkansas Governor's Committee on Human Resources
Ohio Director of Industrial Relations
Raleigh (NC) Human Resources Department, Civil Rights Unit

ORDINANCE

Ordinance - Creating Richmond County Human Relations Commission , passed 01/18/83

(Selected Portions)

An ordinance to create a human relations commission prescribe its composition. The terms of office of its members, its officers, their terms of office and compensation, to provide for an executive director, its office space, appropriations, meetings, rules, reports, duties and powers, to repeal an ordinance adopted October 6, 1981, and for other purposes.

The Board of Commissioners of Richmond County hereby ordains:

Section 1. Establishment.

There is hereby created a Human Relations Commission for the County of Richmond...

Section 14. Duties and Powers.

It shall be the duty of the Commission to:...

(i) Investigate and study complaints, problems and specific situations arising between groups or individuals which result or may result in tensions, discrimination or prejudice in the County on account of race, color, religion, national origin, handicap or age;

(j) Receive, initiate, investigate and pass upon complaints alleging discrimination in employment, and public accommodation because of race, religion, color, sex, national origin, handicap or age;....

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION
CIVIL ACTION NO. CV 195-44

NANCY PRESCOTT,	)
Plaintiff,	)
	)
vs.	)
	)
G.I.W. INDUSTRIES, INC., and	)
KSB AMERICA COMPANY,	)
Defendants.	)
	)

AFFIDAVIT OF BERNICE WILLIAMS-KIMBROUGH

Personally appeared before the undersigned, an officer duly authorized to administer oaths, Bernice Williams-Kimbrough, being duly sworn, deposes and states as follows:

1. My name is Bernice Williams-Kimbrough. I am an adult and am competent to make this Affidavit and my signature below.

2. I am the District Director (Acting) of the Atlanta District Office, (hereinafter referred to as the "ATDO"), of the Equal Employment Opportunity Commission (hereinafter referred to as the "EEOC"). **[end 1; R.1-30; R.1-32;Williams-Kimbrough Aff.]**.

3. I have served in the capacity of either the District Director (Acting) or the Deputy Director of the ATDO since 1990. As such, I am familiar with the ATDO and EEOC contractual relationships with Federal Employment Practices Agencies, (hereinafter "FEP Agency"), in the State of Georgia.

4. The Richmond County Human Relations Commission, (hereinafter the "HRC"), is a FEP Agency which has had an ongoing contract, (titled "Workshare Agreement"), with the

ATDO of the EEOC at all times during my tenure with the ATDO, *i.e.* since 1990.

5. The Workshare Agreement between the ATDO and the HRC, (hereinafter the "Agreement"), is annually negotiated and executed by the District Director of the ATDO and the Director of the HRC.

6. In September, 1994, an Agreement was in effect between the EEOC and the HRC. This Agreement, effective for the period October 1, 1993 through September 30, 1994, had been entered into and executed in September, 1993 by **[end 2]** Chris Roggerson, then District Director of the ATDO, and by Frank C. Thomas, District Director of the HRC. A copy of the Agreement is found attached as Exhibit A to Plaintiff's Brief in Opposition to Defendants Motion for Summary Judgment filed in this above-captioned action.

7. Pursuant to the Agreement between the EEOC and the HRC, it was the intent of the EEOC that the HRC would accept charges for filing on behalf of the EEOC for two different types of cases.

8. First, the HRC was authorized to accept charges for the EEOC over which the HRC has geographic and subject matter jurisdiction: *i.e.* where the employer is located within the geographic boundaries of Richmond County, Georgia and the charge alleges discrimination based on race, color, religion, sex, national origin, handicap or age.

9. Second, the HRC was authorized to accept charges for the EEOC over which the HRC did not have geographic jurisdiction but where the alleged discrimination occurred within the jurisdiction of the EEOC's Atlanta District Office: *i.e.* where the employer is located anywhere within the State of Georgia **[end 3]** and the charge alleges discrimination based on race, color, religion, sex, national origin, handicap, disability or age.

10. Pursuant to the on-going authorization to accept charges on behalf of and as agent for the EEOC, the HRC places an EEOC case number on those charges over which the EEOC has

jurisdiction. This number is assigned by the ATDO.

11. An example of an EEOC number assigned for use by the HRC would be "11A-94-0198." The first three digits ("11A") of this EEOC number refer to and identify the case as arising in the State of Georgia and filed with the HRC, a FEP agency. The next two digits ("94") refer to the federal government's fiscal year of receipt. The last four digits ("0198") reference the numeric sequence of receipt of the charge by the HRC.

12. The HRC also places its own, separate number on the charges it receives. This number reflects the month and year of filing and the sequential number of receipt by the HRC. **[end 4]**.

13. Attached hereto as Exhibit A is a copy of a computer print-out form used by the EEOC to record charges filed with FEP Agencies. This particular print-out shows the charges filed with the HRC in August and September, 1994 where the EEOC has jurisdiction over the charge. These particular charges were all timely filed and administratively transferred to the ATDO for further processing.

14. The first column contains the EEOC charge number. The second and third columns are for the name of the Charging Party and the Respondent (employer). The fourth column shows the charge receipt office (the HRC).

15. The fifth column references the statute allegedly violated, (e.g. Title VII, ADEA). The next column shows the age of the violation when filed with the HRC/EEOC. The seventh column is for the EEOC code for the basis and issues type alleged. For example, "RBH1" refers to race-black and harassment: "GF" refers to gender-female, "P3" refers to promotion.

16. The eight column shows the date the charge was signed or executed by the charging party. In the instant case, this date is September 8, 1994. The ninth **[end 5]** column reflects the time expired between the execution of the charge and the receipt of the charge by the HRC.

17. The ninth column, "AO date," refers to the date that the

HRC electronically notified the EEOC that it was administratively transferring the file to the ATDO. The next two columns (11 and 12) identify the transferring office, *i.e.* the HRC.

18. The last column (13) shows the date that the ATDO responded, electronically, that it had received the case for further processing. In the instant case, the ATDO notified the HRC on September 23, 1994 that the ATDO was in electronic receipt of the charge.

19. The EEOC paid the HRC the sum of Fifty Dollars ($50.00) to accept charge 11A-94-0198 for filing on behalf of the EEOC.

20. The EEOC treated charge 11A-94-0198 as timely filed during the period that the EEOC administratively processed the charge. **[end 6]**.

21. It is the current position of the EEOC that the charge (11A-94-0198) upon which the above-captioned litigation is based was timely filed within 180 days when it was filed with the HRC on or about September 15, 1994.

FURTHER AFFIANT SAYETH NOT:

/s/Bernice Williams-Kimbrough
BERNICE WILLIAMS-KIMBROUGH

Before me, the undersigned Notary Public, appeared Bernice Williams-Kimbrough, a person well known to me, who, being duly sworn, signed and executed this seven (7) page document on this 15 day of April, 1996.

/s/ illegible

[end 7]

Exhibit A
to District Director Kimbrough Affidavit

EEOC National Computer Printout
1 Charge No: 11A940198
2 CP Name : Prescott
3 Respondent Name : GIW INDUSTRIES, INC.
4 Rcv Off :11A
5 Stat: TAE
6 Viol Age: 175
7 Basis/Issues: GF DA DR PF P3
8 Charge Date: 090894
9 Chg Age: 11
10 AO Date: 091994
11 AO Off: 11A
12 Al Flg: A
13 Response by 110 Acct Date FU Attr
A1 092394 11 11A

Selected Portions of EEOC
Eleventh Circuit Amicus Brief (filed 8/22/96)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 96-8545

NANCY PRESCOTT,

Plaintiff-Appellant,

v.

G.I.W. INDUSTRIES, INC., and
KSB AMERICA COMPANY,

Defendants-Appellees.

On Appeal from United States District Court for the
Southern District of Georgia Augusta Division

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT

STATEMENT OF INTEREST

The United States Equal Employment Opportunity Commission ("EEOC" or "Commission") is the agency charged by Congress with the administration, interpretation and enforcement of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and other laws prohibiting employment

discrimination. One of the issues raised in this appeal is whether plaintiff's charge, timely filed with and accepted by a local Fair Employment Practices ("FEP") agency lacking geographic jurisdiction over the charge, is deemed simultaneously filed with the EEOC. **[end 1; Amicus Brief EEOC 11th Cir. August 1996]**. In this case, the worksharing agreement between the local agency and the EEOC provides that the FEP will act as an agent for the EEOC for the purpose of filing charges, but does not specifically grant the local agency authority to accept extraterritorial charges. The other issue presented is whether electronic transfer of a charge from a Fair Employment Practices Agency to the EEOC constitutes an effective filing of a charge with the EEOC, thereby making it timely filed. Because these are issues of recurring concern in the administration of Title VII, the Commission offers its views to the Court.

STATEMENT OF THE ISSUES[1]

(1) Whether a charge, submitted to a local fair employment practices ("FEP") agency lacking geographic jurisdiction over the charge, should be deemed simultaneously filed with the EEOC where the worksharing agreement between the local agency and the EEOC designates each agency as the agent of the other for the purpose of filing charges.

(2) Whether the electronic transfer of a charge from an FEP agency to the EEOC constitutes an effective filing of a charge with the EEOC, thereby making the charge at issue in this case timely filed. **[end 2]**.

SUMMARY OF ARGUMENT

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[1] [n. at 2 orig.] The Commission takes no position with respect to other issues raised by the Appellant.

Prescott's charge was properly filed with the RCHRC less than 180 days after Prescott's discharge in accordance with the worksharing agreement between the EEOC even though the RCHRC was without authority to process the charge. **[end 7]**. The worksharing agreement entered into by the EEOC and the RCHRC provides that each entity will be an agent for the other for the purpose of receiving and drafting charges. To construe the agreement narrowly to prohibit charging parties alleging discriminatory practices in Georgia but outside Richmond County from filing charges with the RCHRC is to make the language of the agreement irreconcilable with its purpose to provide claimants with an efficient and convenient procedure for obtaining redress of their rights.

Moreover, to the extent that any of the other provisions of the worksharing agreement seem inconsistent with this conclusion, those provisions do not govern the circumstances of this case. At the very least, these provisions do not contain "clear and unambiguous" language prohibiting the RCHRC from transmitting to the EEOC charges over which it lacks geographic jurisdiction. Where the language of the agreement is not completely clear, extrinsic evidence of the parties' intent must be considered, and the district court erred in refusing to consider the affidavits of the contracting agencies explaining their understanding of the agreement. The EEOC and the RCHRC, the sole parties to the worksharing agreement, interpret the agreement's provisions as authorizing the RCHRC, as agent for the EEOC, to receive and draft charges alleging discriminatory practices within the State of Georgia but outside of the local agency's geographic jurisdiction, Richmond County. **[end 8]**. Pursuant to that understanding, the RCHRC accepted for filing Prescott's charge, alleging her former employer located in Columbia County, Georgia, violated Title VII when it subjected her to adverse employment actions and terminated her in retaliation for objecting to practices she believed to be discriminatory.

The limitations period for charge filing is subject to tolling and waiver as equity requires. Consequently, even if the EEOC and the RCHRC erroneously interpreted the provisions of its agreement, equity demands that the charge be considered timely filed with the EEOC. Any administrative error committed by the EEOC or the RCHRC should not redound to an innocent charging party's detriment.

Finally, the evidence submitted in this case demonstrates that Prescott filed a timely charge with the EEOC. The RCHRC electronically transferred Prescott's charge to EEOC headquarters on September 19, 1994, 178 days after her termination. Because the acceptance of a charge at any EEOC office, including headquarters, constitutes the filing of the charge for purposes of the statute of limitations. Prescott's charge was timely filed. **[end 9]**.

ARGUMENT

I. BECAUSE THE RCHRC IS EEOC'S AGENT FOR THE PURPOSE RECEIVING DISCRIMINATION CHARGES UNDER THE WORKSHARING AGREEMENT BETWEEN THE EEOC AND THE RCHRC, PRESCOTT'S CHARGE WAS PROPERLY FILED WITH THE EEOC WHEN IT WAS RECEIVED BY THE RCHRC FEWER THAN 180 DAYS AFTER PRESCOTT'S DISCHARGE.

The worksharing agreement between the EEOC and the RCHRC authorizes the RCHRC to accept charges for the EEOC over which the RCHRC has geographic jurisdiction as well as charges over which the RCHRC does not have geographic jurisdiction because the alleged discrimination occurred within the State of Georgia but outside of Richmond

County.[7] Section 706(e) of Title VII provides that a complainant must file a charge of employment discrimination with the EEOC within 180 days of the alleged discrimination.[8] 42 U.S.C. § 2000e-5(e). **[end 10]**. Consequently, the date the RCHRC received the charge should be treated as the date on which the charge was filed with the EEOC for statute of limitations purposes.

A. Express Terms Of The Worksharing Agreement Permit Charges Alleging Discriminatory Employment Practices In Georgia But Outside Richmond County To Be Deemed Filed With the EEOC On The Date They Are Received By The RCHRC.

Pursuant to § 709(b), the Commission and the RCHRC entered into a worksharing agreement to promote "effective enforcement" of Title VII. 42 U.S.C. § 2000e-8(b); see also 42 U.S.C. § 2000e-4(g)(1). The worksharing agreement provides that EEOC and RCHRC will each be an agent of the other for the purpose of filing charges. See Addendum, Exh. A at ii, §

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[7] [n. at 10 orig.] The RCHRC is the local FEP agency charged with the authority to investigate discriminatory practices, to receive written charges alleging violations of the civil rights laws, to investigate such charges or to conduct such investigations in the absence of individual charges whenever it is deemed in the public interest. Therefore, the RCHRC is a deferral agency within the scope and meaning of § 706(c) and (d), 42 U.S.C. § 2000e-5(c) and (d). See 29 C.F.R. § 1601.74(a) (listing RCHRC as a designated FEP agency).

[8] [n. at 10-11 orig.] Section 706(e) also states that, where proceedings have been instituted with a state or local fair employment practices agency "with authority to grant or seek relief," the charge must be filed with the EEOC within 300 days. 42 U.S.C. § 2000e-5(e). However, because the RCHRC does not have authority to grant or seek relief for violations occurring in Columbia County, Georgia, Prescott's charge was governed by the 180-day rather than the 300-day statute of limitations.

II.A; see also, 29 C.F.R. § 1601.8 (charges may be filed "with any designated representative of the Commission"). The agreement further provides that the RCHRC will assign to "all charges taken at its office" a charge number, Exh. A at ii, § II.E., and that the EEOC will pay the RCHRC a fee for accepted charge resolutions, id at v-vi, § V.C.-E. Thus, by its express terms, the worksharing agreement permits the RCHRC to act as the agent of the EEOC for the purpose of receiving and filing discrimination charges over which it does not have geographic jurisdiction, even though the RCHRC does not have the authority to initiate processing of those charges. **[end 11]**.

Moreover, the "Contracting Principles" surrounding this and all worksharing agreements between the EEOC and state and local FEPAs support the conclusion that the worksharing agreement authorized the RCHRC to accept for filing a charge outside of its jurisdiction. The principles expressly state that FEPAs will receive "$40 per accepted charge for performing certain intake services on charges not jurisdictional with the intake agency and which EEOC will process." See Addendum, Exh. B. at 13. Consistent with these principles, the RCHRC accepted Prescott's charge, assigned to it an EEOC number, and the EEOC paid the RCHRC the $40.00 intake service fee. Thus, Prescott's charge should be deemed to have been filed with the EEOC on September 19,1994.

The district court's reliance on three provisions of the worksharing agreement which it says clearly prohibit the RCHRC from accepting charges originating in Georgia but outside of Richmond County is misplaced. 3/21/96 decision at 4. Contrary to the court's assertion that the worksharing agreement sets forth, in "clear and unambiguous language," that the RCHRC does not have authority to file charges over which it does not have geographic jurisdiction, 5/23/96 decision at 4, the agreement does not prohibit the RCHRC from accepting charges such as the one at issue in this case. **[end 12]**.

Section II.B. states, "The FEPA shall take all charges

alleging a violation of Title VII, ADEA, EPA, or the ADA where the parties have mutual jurisdiction and refer them to the EEOC, so long as the allegations meet the minimum requirements of those Acts." While this provision requires the RCHRC to take all charges over which there is mutual jurisdiction, nothing in the language can be read to prohibit the RCHRC from accepting charges over which it does not have geographic jurisdiction but the EEOC does have jurisdiction exists. Section II.C. states that "[e]ach agency will inform individuals of their rights to file charges with the other Agency and or assist any person alleging employment discrimination to draft a charge in a manner which will satisfy the requirements of both agencies to the extent of their common jurisdiction." The purpose of this section is to ensure that each agency assists a charging party only to the extent of its expertise. Contrary to the district court's rationale, this section does not substantiate its conclusion that the RCHRC may not accept charges over which it does not have jurisdiction. **[end 13]**.

The court also identifies section I.B. as a provision which limits the scope of the agreement to cover only circumstances in which both the EEOC and the RCHRC have both geographic and subject matter jurisdiction.[9] See Addendum, Exh. A at I. The boilerplate language in section I.B. referring to the mutual jurisdiction of the two agencies is not included, as the district court found, for the purpose of limiting the RCHRC's authority to accept and file charges.

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[9] Section I.B. of the worksharing agreement states:
In recognition of, and to the extent of the common jurisdiction and goals of the two (2) Agencies, and in consideration of the mutual promises and covenants contained herein, the FEPA and the EEOC hereby agree to the terms of this Worksharing Agreement, which is designed to provide individuals with an efficient procedure for obtaining redress for their grievances under appropriate (Richmond County, GA) or Federal laws.

Rather, that language is included for the purpose of preventing a state or local agency without geographic jurisdiction from waiving the referral rights of another state or local agency without geographic jurisdiction from waiving the referral rights of another state or local agency with geographic jurisdiction to receive the charge. Thus, for example, if an individual whose rights are violated in Florida files a charge with the FEP agency in Louisiana, the Louisiana FEP agency could not process the charge under its state law, or waive the Florida FEP agency's right to initial processing of the charge because such action would intrude on the Florida FEP agency's statutory right to process the charge.

Moreover, the language of section I.B. is consistent with one of the main purposes of the inter-agency agreement -- "to avoid duplication of effort by apportioning the responsibilities for processing charges." EEOC v. Donald E. Green Law Offices, 76 f.3d 19, 21 (1st Cir. 1996). **[end 14]**. Because there was no possibility of duplication of effort in a case such as this, section I.B. has no relevance. Here, the county agency accepted for filing a charge involving employment actions in another county in the same state where no county or state FEP agency has jurisdiction over the charge. The only entity with jurisdiction to process the charge is the EEOC. Therefore, the only entity with an interest in the charge is the EEOC and the EEOC, of course, does not object to the RCHRC accepting charges for alleged violations occurring in Georgia but outside Richmond County and transferring those charges to the Commission for processing.

Further, while section I.B. makes clear that areas of mutual jurisdiction are governed by the agreement, this section's reference to mutual jurisdiction was not intended to preclude the agreement from reaching agency activities over

which mutual jurisdiction does not exist. Section II.H.[10] clearly contemplates the receipt of charges over which jurisdiction is not mutual. Otherwise, there would be no question of the other agency's jurisdiction. See Addendum, Exh. A at iii, § II.H. More importantly, the provision stating that RCHRC and EEOC are each the agent of the other for the purpose of filing charges, id. at ii, § II.A., has no limiting language or reference only to charges over which the two agencies have "mutual jurisdiction." **[end 15].**

B. Construing The Worksharing Agreement As Authorizing The RCHRC To Accept For Filing All Charges Alleging Discriminatory Practices In The State Of Georgia, Including Those Whose Situs Is Outside Richmond County, Is Consistent With The Parties' Intent, The Agreement's Stated Purpose And Principles Of Equity

At a minimum, the agreement's language cannot be fairly characterized as "clear and unambiguous" and the district court erred in holding to the contrary. Even if the wording does not clearly authorize the RCHRC to file charges such as Prescott's, the wording certainly does not clearly prohibit the RCHRC from accepting charges such as Prescott's for filing. And, where the intent of an agreement's provisions is not clear from the face of the document, courts may rely on extrinsic evidence to ensure that the parties' intent is enforced and the district court committed a legal error in refusing to consider such evidence. Restatement (Second) of Contracts, § 202, comment c, § 212 comment b (1981); Stewart v. KHD Deutz of America, Corp., 980 F.2d 698, 704 (11th Cir. 1983) (where each interpretation of contract provisions is plausible, trial court errs by failing to consider extrinsic evidence); Orkin

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[10] Section II.H. states:

The delegations of authority to receive charges contained in Paragraph II.a. does not include the right of one Agency to determine the jurisdiction of the other Agency over a charge.

Exterminating Co. v. FTC, 849 F.2d 1354, 1362-63 (11th Cir. 1988) (where a contract is ambiguous, extrinsic evidence is admissible to explain that ambiguity), cert. denied, 488 U.S. 1041 (1989). See also Boilermakers, 858 F.2d at 1561 (whether a contract is ambiguous is a question of law). **[end 16].**

Moreover, even if the district court correctly characterized the worksharing agreement's language as unambiguous on this issue, the analysis cannot end there when the intent of the parties is equally unambiguous. As the Seventh Circuit has stated, "the overriding purpose in construing a contract is to give effect to the mutual intent of the parties at the time the contract was made; [] while the language of the contract is normally the best evidence of that intent, a court can properly disregard even unambiguous language when it is convinced that the parties meant something different form what they said." White v. Roughton, 689 F.2d 118, 120 (7th Cir. 1982). In this case, the agencies' understanding of how the worksharing agreement should operate, as demonstrated by the affidavits of the EEOC and the RCHRC, is strong evidence of the parties' intent as to how the agreement would operate. Officials of both agencies clearly attested that it was their intent that the RCHRC would accept charges involving employers in Georgia even if the RCHRC lacked geographic jurisdiction over the charges; and that it would transmit those charges to the EEOC.

The district court's construction of section I.B. is inconsistent not only with the parties' intent but also with the agreement's stated purpose, "to provide individuals with an efficient procedure for obtaining redress for their grievances under appropriate...Federal laws, "and would unnecessarily deprive alleged victims of discrimination of their right to redress because of an administrative technicality over which they have no control. See Addendum, Exh. A. at I, § I.B. **[end 17].** See EEOC v. Commercial Office Products, 486 U.S. 107, 118

(1988) (a purpose of the worksharing agreement is "to promote 'time economy and the expeditious handling of cases'" (quoting 110 Cong. Rec. 9790 (1964) (remarks of Sen. Dirksen))); Ford v. Bernard Fineson Development Center, 81 F.3d 304, 307 n.5 (2d Cir. 1996) (worksharing agreements entered into by the EEOC and a state or local FEP agency "are principally intended to benefit third parties"). A contract should be interpreted to give effect to all its provisions. Guaranty Financial Services v. Ryan, 928 F.2d 994, 999 (11th Cir. 1991). Consequently, section I.B. should not be read in a manner which undermines the agreement's stated aim. See also Atlantic Lines, Ltd. v. Narwhal, Ltd., 514 F.2d 726, 730 (5th Cir. 1975) (when determining the meaning of particular contract provisions, "court(s) should give special consideration to the purposes" for the provisions' inclusion). Given the agreement's stated overall purpose to provide an efficient administrative procedure for filing charges, the EEOC's interpretation that the RCHRC is permitted to accept charges over which it lacks geographic jurisdiction is eminently reasonable. If this Court believes the agreement's language limits the RCHRC's authority to file only those charges alleging discrimination in Richmond County, at the very least this is a case in which the EEOC and the RCHRC "meant something different from what they said," see White, 689 F.2d at 120, and, this Court must conclude that the agreement is ambiguous on the issue in question. Boilermakers, 858 F.2d at 1561. **[end 18].** In light of that ambiguity, the district court should have considered the RCHRC and the EEOC affidavits to determine the intent of the worksharing agreement provisions. See Sofferin v. American Airlines, 923 F.2d 552 (7th Cir. 1991) (remand to district court for evidentiary hearing necessary where proper meaning of worksharing agreement's ambiguous provisions must be determined).

Finally, equity demands that the charge be considered filed with the EEOC once it was received by the RCHRC. The jurisdictional requirements of Title VII are "subject to waiver as

well as tolling when equity so requires." Zipes v. Transworld Airlines, 455 U.S. 385, 393 (1982). In this case, any failure to meet the filing requirements was the result of acts or omissions by the administrative agencies involved, not Prescott. An administrative error by the EEOC should not prejudice an innocent charging party. See Jefferson v. Peerless Pumps, 456 F.2d 1359, 1361 (9th Cir. 1972) (Title VII "does not condition an individual's right to sue upon the EEOC's performance of its administrative duties"); Patterson v. American Tobacco Co., 535 F.2d 257, 272 (4th Cir. 1976) ("plaintiffs are not to be barred from Title VII action due to possible error [or] neglect...by the EEOC...."); Miller v. International Paper Co., 408 F.2d 283, 290 (5th Cir. 1969) (substantive rights of victim not affected by EEOC action or inaction). Therefore, even if this Court were to hold that the agreement does not authorize the RCHRC to accept for filing charges outside its geographic jurisdiction, it should waive the requirement of timely filing with the EEOC and order the case to proceed in the district court. **[end 19]**.

II. EVEN IF THE RCHRC FILLING WAS NOT A FILING WITH THE EEOC, PRESCOTT'S CHARGE WAS FILED DIRECTLY WITH THE EEOC WITHIN 180 DAYS AND WAS, THEREFORE, TIMELY

In the alternative, even if this Court concludes that a charge is deemed filed only when it is received by an entity with both subject matter and geographic jurisdiction, this Court must hold that Prescott's charge was nonetheless timely filed. The facts, as presented to the district court, incontrovertibly demonstrate that the Commission received the electronic transmittal of the charge in Washington, D.C. on September 19, 1994, 178 days after the allegedly discriminatory action.

The evidence submitted to the district court establishes that Prescott's charge was timely filed with the Commission and that the district court erred in failing to so hold. The record

shows that the RCHRC electronically transferred Prescott's charge to the EEOC on the date it received the charge, September 19, 1994, 178 days after the challenged termination. Although the transfer to the Atlanta district office was not complete until September 23, 1996, after the statute of limitations had expired, the relevant date for statute of limitations purposes is the first date on which the Commission received the charge. See 29 C.F.R. § 1601.8 (charges may be filed "at the offices of the Commission in Washington, D.C., or any of its filed offices") and 29 C.F.R. § 1601.13(a)(1) ("Charges arising in jurisdictions having no FEP Agency are filed with the Commission upon receipt.") (emphasis added). [n. at 20 orig.]. Cf. Sofferin, 923 F.2d at 555 (charge deemed timely filed with EEOC's Detroit office even though it was not received by EEOC's Chicago office, which had jurisdiction to process, until after limitations period expired). Because the charge was received by the Commission in fewer than 180 days, the district court erred when it dismissed Prescott's charge as untimely. **[end 21]**.

CONCLUSION

For the foregoing reasons, the district court's decision should be reversed and the case remanded with instructions to reinstate Prescott's Title VII action.

Respectfully submitted,
C. GREGORY STEWART
General Counsel
GWENDOLYN YOUNG REAMS
Associate General Counsel
CAROLYN L. WHEELER
Assistant General Counsel
/s/ Susan L. P. Starr
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1801 L Street, N.W.
Suite 7020
Washington, D.C. 20507
202/663-4726
[end 22].

[Found as Exhibit A to RCHRC Director Thomas Aff.; R.1-15- Thomas Aff. Ex. A; Exhibit A to EEOC Amicus Brief]

WORKSHARING AGREEMENT
between
RICHMOND COUNTY
HUMAN RELATIONS COMMISSION
and the
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
FOR FISCAL YEAR 1994

I. INTRODUCTION

A. The Richmond County Human Relations Commission, hereinafter referred to as the **FEPA**, has jurisdiction over allegations of employment discrimination filed against employers of 15 or more employees occurring within Augusta/Richmond County, pursuant to an Ordinance of the Richmond County Board of Commisioners.

The EqualEmployment Opportunity Commission, hereinafter referred to as **EEOC**, has jurisdiction over allegations of employment discrimination occurring throughou the United States where such charges are based on race, color, religion, sex, or nationalorigin, all pursuant to Title VII of the Civil Rghts Act of 1964, as amended (42 U.S.C., 2000(e) hereinafter referred to as Title VII). EECC has jurisdiction to investigate and determine charges of discrimination based on age (40or older) under the Age

Discrimination in Employment Act (ADEA) OF 1967, As amended (29 U.S.C., 621 et. seq.), for unequal wages based on sex under the Equal Pay Act of 1963 (29 U.S.C., 206), and over allegations of employment discrimination based on disability pursuant to Title I of the Americans with Disabilities Act of 1991, (42 U.S.C., 12101).

B. In recognition of, and to the extent of the common jurisdiction and goals of the two (2) Agencies, and in consideration of the mutual promises and covenants contained herein, the ~~FEPA and the EEOC hereby agree to the~~ terms of this Worksharing Agreement, which is designed to provide individuals with an efficient procedure for obtaining redress for their grievances under appropriate (Richmond County, GA.) or Federal laws. **[end I; R.1-15; Thomas Aff. Ex. A; Ex. A, EEOC 11th Cir. Amicus Brief]**.

II. FILING OF CHARGES OF DISCRIMINATION

A. In order to facilitate the assertion of employment rights, the EEOC and the FEPA each designate the other as its agent for the purpose of receiving and drafting charges.

B. The FEPA shall take all charges alleging a violation of Title VII, DEA, EPA, or the ADA where the parties have mutual jurisdiction and refer them to the EEOC, so long as the allegations meet the minimum requirements of those Acts.

C. Each Agency will inform individuals of their rights to file charges with the other Agency and or assist any person alleging employment discrimination to draft a charge in a manner which will satisfy the requirements of both agencies to the extent of their common jurisdiction.]

D. For charges that are to be dual-filed, each Agency will use EEOC Charge Form 5 (or alternatively, and employment discrimination charge from which within statutory limitations, is acceptable in form and content to EEOC and the FEPA) to draft charges.

E. Each Agency will make every effort to forward all dual filed charges to the other Agency within two working days of receipt. The Agency which initially takes the charge will provide notice of the charge to the respondent within ten calendar days of receipt. RCHRC will assign a charge number to all charges taken at its office, and follow its procedures for notification of Respondent. Charges taken for RCHRC at the ATDO will reflect the District office number I.E. 110. RCHRC will acknowledge receipt of such charges and indicate on the accompanying forms (EEOC 212-A whether or not it will process any such charges. Such notification will be mailed to EEOC within two working days after receipt of charges so deferred.

F. Each Agency will also forward all other

relevant data obtained at time of intake.

G. Each Agency agrees that it will notify both the Charging Party and Respondent of the dual-filed nature of each such charge it receives for initial processing and explain the rights and responsibilities of the parties under the applicable Federal, State, or Local statutes. **[end ii]**

H. The delegations of authority to receive charges contained in Paragraph II. a. does not include the right of one Agency to determine the jurisdiction of the other Agency over a charge.

III. DIVISION OF INITIAL CHARGE-PROCESSING RESPONSIBILITIES

In recognition of the statutory authority granted to the FEPA by Section 706 (c) and 706 (d) of Title VII as amended; and by Title I of the Americans with Disabilities Act, and the transmittal of charges of age discrimination pursuant to the Age Discrimination in Employment Act of 1967, the primary responsibility for resolving dual-filed charges between the FEPA and the EEOC will be divided as follows:

A. EEOC will initially process and the FEPA hereby waives its right to initially process:

1. EEOC will initially process and the FEPA hereby waives its right to initially process:

--All Title VII charges received by the FEPA 240 days or more after the date of violation;

--Concurrent Title VII/EPA charges;

--All charges against the FEPA or its parent organization where such parent organization exercises direct or indirect control over the charge decision making process;

--All charges filed by EEOC Commissioners;

--Charges also covered by the Immigration Reform and Control Act;

--Complaints referred to EEOC by the Department of Justice, Office of Federal Contract Compliance, or Federal fund-granting agencies under 29 CFR, 1640, 1641, and 1691 and class complaints retained by these agencies for action;

--Any charge where EEOC is a party to a Conciliation Agreement or a Consent Decree which, upon mutual consultation and agreement, is relevant to the disposition of the charge. The EEOC will notify the FEPA of all Conciliation Agreements and Consent Decrees which have features relevant to the disposition of subsequent

charges; **[end iii]**.

--Any charge alleging retaliation for filling a charge with EEOC or for cooperating with EEOC; and

--All charges against Respondents which are designated for initial processing by the EEOC in a supplementary memorandum to this Agreement.

2. The FEPA will process:

--Any charge alleging retaliation for filing a charge with the FEPA or cooperating with the FEPA;

--Any charge where the FEPA is a party to a Conciliation Agreement or a Consent Decree which, upon mutual conciliation and agreement, is relevant to the disposition of the charge. The FEPA will provide the EEOC with an on-going list of all Conciliation Agreements and Consent Decrees which have features relevant to the disposition of subsequent charges;

--All charges which allege more than one basis of discrimination where at least one basis is not covered by the laws administered by EEOC but is covered by the FEPA Ordinance, or where EEOC is mandated by federal

court decision or by internal administrative EEOC policy to dismiss the charge, but FEPA can process that charge.

--All charges against Respondents which are designated for initial processing by FEPA in a supplementary memorandum to this Agreement; and

--All disability-based charges against Respondent over which EEOC does not have jurisdiction.

B. Notwithstanding any other provision of the Agreement, the FEPA or the EEOC may request to be granted the right to initially process any charge. Such variations shall not be inconsistent with the objective of this Worksharing Agreement or the Contracting Principles. **[end iv]**.

C. Each Agency will on a quarterly basis notify the other of all cases in litigation and will notify each other when a new suit is filed. As charges are received by one Agency against a Respondent on the other Agency's litigation list, a copy of the new charge will be sent to the other Agency's litigation unit withing two working days.

D. EEOC will not defer or refer any charge for the FEPA to process that is not jurisdictional on its face with both Agencies. If it is

apparent that one Agency might have jurisdiction when another doe not, then the Charging Party will be referred to the appropriate Agency.

IV. EXCHANGE OF INFORMATION

A. Both the FEPA and EEOC shall make available for inspection and copying to appropriate officials fro the other Agency any information which may assist each Agency in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, investigative files, conciliation agreements, staffing information, case management printouts, charge processing documentation, and any other material and data as may be related to the processing of dual-filed charges or administration of the contract. The Agency accepting information agrees to comply with any confidentiality requirements imposed on the agency providing the information. With respect to all information obtained from EEOC, the FEPA agrees to observe the confidentiality provisions of the Title VII, ADEA, EPA, and ADA.

B. In order to expedite the resolution of charges or facilitate the working of this Agreement, either Agency may request or permit personnel of the other Agency to accompany or to observe its personnel when processing a charge.

V. RESOLUTION OF CHARGES

A. Both agencies will adhere to the procedures set out in EEOC's Order 916, Substantial Weight Review Manual, and the State and Local Handbook. If there are procedural changes at any point during the contract year, the Agencies agree to renegotiate the terms of this section, as appropriate.

B. For the purpose of according substantial weight to the FEPA final finding and order, the FEPA must submit to the **[end v]** EEOC copies of all documents pertinent to substantial weight review; the evaluation will be designed to determine whether the following items have been addressed in a manner sufficient to satisfy EEOC requirements; including, but not limited to:

1. jurisdictional requirements,

2. investigation and resolution of all relevant issues alleging personal harm with appropriate documentation and using proper theory,

3. relief, if appropriate,

4. mechanisms for monitoring and enforcing compliance with all terms of conciliation agreements, orders

After public hearing or consent orders to which the FEPA is a party.

C. In order to be eligible for contract credit and/or payment, submissions must meet all the substantive and administrative requirements as stipulated in the 1994 Contracting Principles.

D. For the purposes of determining eligibility for contract payment, a final action is defined as the point after wich the charging party has no administrative recourse, appeal, or other avenue or redress available under applicable State and Local statutes.

E. As stipulated in the 1994 Contracting Principles, the FEPA will mange its inventory and work process to effect and overall reduction in the age of its dual-filed inventory. In accordance with the requirements of Attachment A of the FY 1994 Contracting Principles, the FEPA will receive credit for accepting charge resolutions which fal within the resolution mis outlined below:

A. CHARGES 270 DAYS OLD OR LESS: 51.2%

B. CHARGES 271 TO 360 DAYS OLD: 25.5%

C. CHARGES 361 TO 540 DAYS OLD: 31.0%

D. CHARGES 541 TO 720 DAYS OLD: 2.4%

E. MORE THAN 720 DAYS OLD: 0%

[end vi]

VI. IMPLEMENTATION OF THE WORKSHARING-

AGREEMENT

A. Each agency will designate a person as liaison official for the other agency to contact concerning the day-to-day implementation for the Agreement. The liaison for the FEPA will be Frank C. Thomas, Executive Director. The liaison official for the EEOC will [be] Peggy L. Rocker, Deferral Coordinator.

B. The agencies will monitor the allocation of charge-processing responsibilities as is set forth in the Agreement. Where it appears that the overall projection appears inappropriate, the appropriate portion of this Agreement will be modified to ensure full utilization of the investigation and resolution capacities of the FEPA and rapid redress for allegations of unlawful employment discrimination.

C. EEOC will provide original forms to be copied by the FEPA, in accordance with the Regulations and the Compliance Manual to be used by the FEPAs in correspondence with charging Parties and Respondents.

D. If a dispute regarding the implementation or application of this agreement cannot be resolved by the FEPA and District Office Director, the issues will be reduced to writing by both parties and forwarded to the Director of the office of Program Operations for resolution.

E. This agreement shall operate from the first (1st) day of October 1993 to the thirtieth (30th) day of September 1994 and may be renewed or modified by mutual consent of the parties.

I have read the foregoing Worksharing Agreement and I accept and agree to the provisions contained therein.

Date 9/16/93 /s/Chris Roggerson
Name District Director
Equal Employment Opportunity Commission
(Atlanta) District Office

Date 9/14/93 /s/Frank C. Thomas
Name, Director
Richmond County Human Relations Commission
(Full Name of FEPA)
[end vii]

[Found as Exhibit B to EEOC Amicus Brief; see also references to pay for this intake see RCHRC Director Thomas Aff. R.1-15- Thomas Aff. Ex. B; Exhibit A to EEOC Amicus Brief]

EEOC'S PROPOSED CONTRACTING PRINCIPLES FOR STATE AND LOCAL FAIR EMPLOYMENT PRACTICES AGENCIES FOR FISCAL YEAR 1993

As a basic principle, EEOC will contract with State and, where appropriate, Local Fair Employment Practices Agencies (FEPAs) to process Title VII and ADEA charges received by the EEOC and/or a FEPA. The criteria and parameters established herein are designed to ensure an efficient, effective and coordinated federal-state law enforcement program. The purpose of the contracts is to assist the EEOC in resolving the high volume of Title VII charges and ADEA charges while simultaneously providing support for FEPA charge resolution efforts. The EEOC remains committed to continued improvement of the relationship between the Commission and the Agencies.

EEOC will contract with FEPAs for the satisfactory processing of Title VII charges and ADEA charges. A base amount per acceptable charge resolution is set by EEOC each year based on the amount of Congressional appropriations. In the absence of a reduction in appropriations, this amount shall not be less than $450.00. **[end 1; Ex. B]**.

Nothing in these criteria shall be construed to prohibit EEOC from providing funds to Tribal Employment Rights Offices which carry out enforcement activities.

I. Criteria for Eligibility

A. In order to be considered eligible to enter into an initial or renewed contract with the EEOC, a FEPA must:

1. Be a designated 706 Agency;
2. Be one of the following (a) a recipient of a contract for the preceding year; or (b) a State FEPA; or (c) a Local FEPA in a jurisdiction where the State FEPA was not under contract for the preceding year, or; (d) a Local FEPA in a jurisdiction in which the State FEPA's current charge inventory is greater than nine months at the FEPA's monthly rate of production.

3. Enter into a worksharing agreement that comports with the principles contained herein and achieves the objectives of the contracting process. The term of the agreement shall run from October 1, 1992 through September 30, 1993 (See Section V); **[end 2]**

Headquarters will conduct on-site evaluations of the investigative an administrative charge processing procedures of contract FEP Agencies. Accordingly, FEPAs are expected to comply with reasonable requests for providing and/or making available information concerning various aspects of their processes and procedures as they relate to or impact on the management and disposition of the dual-filed inventory. Such information includes but is not limited to staffing information, case management printouts, charge processing documentation, and any other material and data as may be related and/or apply to the processing of

dual-filed charges or administration of the contract.

III. **Title VII/ADEA FY 1993 Charge Resolution Contracts**

A. In conjunction with Attachment A, the primary consideration for determining the amount of a contract will be the number of accepted charge resolutions produced by an Agency between July 1, 1991 and June 30, 1992.

1. FEPA contract amounts will be based on

a. $450 per accepted charge resolution for charges closed from July 1, 1991 through June 30, 1992, and **[end 12]**

b. $40 pre accepted charge for performing certain intake services on charges not jurisdictional with the intake agency and which EEOC will process.

2. Similarly, the contract amount for subsequent years will be determined by the number of accepted resolutions produced by an Agency during the period July 1 of the preceding year through June 30 of the year.

B. In order to ensure consistent levels of productivity toward established results, the District Director will review production on a quarterly basis. The FEPA is expected to submit for contract credit approximately one-

fourth of the total accepted resolutions required under the contract each quarter.

1. If the annualized linear projection of the Contract's actual production at the end of the second and third quarters indicates that the Contractor is producing at a rate which would either exceed or not meet the number of charges required under the contract, EEOC may unilaterally modify the contract price and total. **[end 13]**

REGULAR NOTATION VOTING RECORD

Date: 07/07/92
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Number: 92-026R — Overall Vote: Approved
Date Circulated: 05/28/92
Office: PROGRAM OPERATIONS — Date Due: 06/03/92
Contact: MICHAEL J. DOUGHERTY, 663-4944
Date Finalized: 07/06/92

Description	Commissioners' Votes
FY 1993 STATE & LOCAL CONTRACTING PRINCIPLES	EK RS JC TG JT 01 01 01 01 01

/S/Approved (5-0)
7/6/92
[end 1; Ex. C]